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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,059	12/19/2001	Patricia Lee Christon	8819	6014

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[REDACTED] EXAMINER

KIDWELL, MICHELE M

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

3761

DATE MAILED: 08/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/025,059	CHRISTON ET AL.
	Examiner	Art Unit
	Michele Kidwell	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 19 December 2001 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4.5</u> .	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description:

- Reference character "23"
- Reference character "43"
- Reference character "45"

A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 – 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With reference to claim 1, the applicant claims that the absorbent article has "two portions, a colored portion and a non-colored portion..." Does the applicant intend to claim that the article has four portions (i.e. two portions, a third colored portion and a fourth non-colored portion) or that the article has two portions that include the colored portion and the non-colored portion?

The same holds true in claims 1 and 18 with respect to the applicant's claimed shades. Does the article have four shades or does the article have two shades that include a first and second shade. Clarification and/or correction are needed.

Claim 14 recites the limitation "the colored insert" in line 1. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 2 and 8 – 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Benecke et al. (US 2003/0114818).

As to claim 1, Benecke et al. (hereinafter “Benecke”) disclose an absorbent article having an upper surface, a lower surface and a periphery comprising a topsheet having a bottom surface and a viewing surface positioned opposite to the bottom surface, the viewing surface facing upwardly towards the upper surface of the absorbent article (page 2, paragraph 0036), a backsheet having a garment facing surface and a user facing surface positioned oppositely to the garment facing surface (page 2, paragraph 0037), the backsheet being joined to the topsheet (page 3, paragraph 0045); an absorbent core (16) having a top surface and a bottom surface positioned opposite to the top surface, the absorbent core being positioned between the topsheet and the backsheet (figure 11B); and the absorbent article having at least two portions, a colored portion and a non-colored portion (page 14, paragraph 0106), the colored portion and the non-colored portion being viewable from the viewing surface of the topsheet (figure 11B), the colored portion having at least two shades, a first shade (22) and a second

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shade (20) the first shade being positioned substantially within the second shade (figure 11B), the second shade being different from the first shade (page 7, paragraph 0070), the at least two shades operating to create a perception of depth within the absorbent article by a user looking upon the viewing surface of the topsheet as set forth on page 3, paragraph 0048.

Benecke discloses that part of the masking material may be translucent (i.e. non-colored) and that the article may include white ribbons (second shade) of material disposed on a dark colored (first shade) material. As shown in figure 11B, the white is positioned within the second shade.

As to claim 2, Benecke discloses an absorbent article wherein the first shade of the color (darker colored material of 22) is darker than the second shade of the color (white ribbons of 20) as set forth on page 7 in paragraph 0070.

Regarding claim 8, Benecke discloses an absorbent article wherein the size of the colored portion ranges from about 5% to about 98% of the viewing surface of the topsheet as set forth on page 14, paragraph 0106. The examiner contends that if the translucent portion (non-colored portion) covers 50% of the article, then it is inherent the colored portion would also comprise 50% of the article thereby meeting the claimed limitations.

As to claim 9, Benecke discloses an absorbent article wherein the first shade of the colored portion is positioned substantially centrally in relation to the second shade of the colored portion as set forth in figure 11B.

With reference to claim 10, Benecke discloses an absorbent article wherein the colored portion is an insert positioned between the topsheet and the absorbent core as set forth on page 7 in paragraph 0071. Benecke states that the dark colored fabric is also the fabric of the containment layer. Further, Benecke states that the containment layer may be covered by a topsheet as set forth on page 2, paragraph 0036.

Regarding claim 11, Benecke discloses that the dark colored fabric is the containment layer as set forth on page 7 in paragraph 0071. Benecke also states that a topsheet is optional on page 2 in paragraph 0036. The examiner contends that without the optional topsheet, the colored portion would form a part of the topsheet.

With respect to claim 12, Benecke discloses an absorbent article wherein the colored portions as part of the absorbent core whereby the colored portion is viewable from the viewing surface of the topsheet as set forth on page 5 in paragraph 0061. Benecke states that the topsheet is perforated which would allow for the viewing of the colored layer and the examiner contends that the colored layer may be considered a part of the absorbent core since the liquid permeable layer would also function in retaining some liquid.

As to claim 13, Benecke discloses the colored portion as a multi-layered insert (20,22) that is positioned beneath the topsheet as set forth on page 2, paragraph 0036 as previously explained in the rejection of claim 10.

With respect to claim 14, Benecke discloses a colored insert having a first layer (20) and a second layer (22) wherein the first layer comprises one shade of color and wherein the second layer comprises another shade of color as set forth on page 7 in paragraph 0071.

With reference to claims 15 – 17, Benecke discloses the topsheet (the containment layer without the optional cover sheet) as a formed film and a nonwoven as set forth on page 3 in paragraph 0043.

Regarding claim 18, Benecke discloses an absorbent article having an upper surface and a lower surface comprising a topsheet having a bottom surface and a viewing surface positioned opposite to the bottom surface, the viewing surface facing upwardly towards the upper surface of the absorbent article (figure 11B); a backsheet having a garment facing surface and a user facing surface positioned oppositely to the garment facing surface, the backsheet being joined to the topsheet (figure 11B); an absorbent core (16) having a top surface and a bottom surface positioned opposite to the top surface, the absorbent core being positioned between the topsheet and the backsheet (figure 11B); and the absorbent article having a colored portion being viewable from the viewing surface of the topsheet (page 3, paragraph 0048) the colored portion having at least two shades, a first shade (22) and a second shade (20), the first shade being positioned substantially within the second shade (figure 11B), the second shade being different from the first shade (page 7, paragraph 0070), the at least two shades operating to create a perception of depth within the absorbent article by a user

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looking upon the viewing surface of the topsheet as set forth on page 3, paragraph 0048.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Michele Kidwell  
Michele Kidwell  
August 5, 2003



DENNIS RUHL  
PRIMARY EXAMINER